

# Colorado Revised Statutes 2016

## TITLE 20

### DISTRICT ATTORNEYS

#### ARTICLE 1

##### District Attorneys

#### PART 1

##### GENERAL PROVISIONS

**20-1-101. Bond and oath of district attorney and staff.** (1) Every district attorney, before entering upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and the organic law of the state and that he will faithfully discharge the duties of his office. He shall also execute to the people of the state of Colorado a bond in the sum of five thousand dollars, with a good and sufficient individual, schedule, or blanket corporate surety bond, or other acceptable security, to be approved by the secretary of state, conditioned for the faithful discharge of the duties of his office, as the same are prescribed by law, and upon any breach of such bond, an action shall lie thereon for the benefit of any county fund or person injured thereby.

(2) As the district attorney may direct, the assistant and deputy district attorneys and other employees appointed pursuant to this title may be required to file with the secretary of state the bond required by law to be filed by district attorneys.

**20-1-102. Appear on behalf of state and counties.** (1) Every district attorney shall appear in behalf of the state and the several counties of his or her district:

(a) In all indictments, actions, and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party;

(b) On the hearing of every writ of habeas corpus sued out by any person charged with or convicted of any public offense before the judge of his district;

(c) In any such indictment, action, or proceeding which may be removed from the district court of any county within his district for appellate review as provided by law and the Colorado appellate rules;

(d) In any such indictment, action, or proceeding which may be brought to the district court of any county in his or her district by change of venue from any other district;

(e) When he or she may deem it advisable to do so, in the preliminary examination of persons charged with any offense before any judge within his or her district; and

(f) In any probation probable cause hearing brought pursuant to the rules adopted under the "Interstate Compact for Adult Offender Supervision", part 28 of article 60 of title 24, C.R.S., or the interstate compact for juveniles, part 7 of article 60 of title 24, C.R.S.

(2) Nothing in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend in behalf of the people of the state or of such county, in any such indictment, action, or proceeding.

(3) The district attorney, when enforcing support laws pursuant to statute or contract, may use any remedy, either civil or criminal, available under the laws of this state and may appear on behalf of the people of the state of Colorado in any judicial district in this state. When doing so, the district attorney represents the people of the state of Colorado, and nothing within this section shall be construed to create an attorney-client relationship between the district attorney and any party, other than the people of the state of Colorado, or witness to the action; except that any district attorney who is a contractual agent for a county department of social services shall collect a fee pursuant to section 26-13-106 (2), C.R.S.

**20-1-103. Collect forfeited recognizances.** It is the exclusive duty of the district attorney to provide for the collection of forfeited recognizances and turn the money so collected into the registry of the court declaring the forfeiture. In fulfilling such duty, the district attorney may contract with any person or entity and provide for payment of any fees and costs for the services of such person or entity out of such moneys collected.

**20-1-104. Appear at inquests.** The district attorneys of the several judicial districts in the state of Colorado shall appear in their respective districts at all inquests held by any coroner and have power to subpoena and examine witnesses at any such inquest.

**20-1-105. Opinions to county officers - representation.** (1) The district attorney, upon request of any county officer of any county within his district, without fee, shall give his opinion in writing upon all questions of law having references to the duties of such officer which may be submitted and shall file and preserve in his office a copy of all such opinions.

(2) The district attorney, upon a request in the form of a resolution by the board of county commissioners of any county within his district, shall represent any county officer enumerated in article 10 of title 30, C.R.S., or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of the county officer.

(3) In any city and county, the district attorney, upon a request in the form of a resolution by city council, shall represent any city and county officer, as provided in the charter of such city and

county, or the employees of any such officer in the defense of any civil suit or civil proceeding brought against such officer in any court of this state or any federal court if such action directly relates to the duties of any such officer.

**20-1-106. Appear and advise grand juries.** The district attorneys for the several judicial districts in the state of Colorado shall appear in their respective districts at all sessions of any grand jury which may be convened in any county within their respective districts, and it is the duty of the district attorney to advise any grand jury convened within his district and to examine witnesses who may be subpoenaed before any such grand jury.

**20-1-106.1. Preparation and review of affidavits and warrants.** (1) The district attorneys of the several judicial districts in the state of Colorado shall:

(a) Render, in their quasi-judicial capacity, legal advice to peace officers, upon the request of such officers or of the court, pertaining to the preparation and review of affidavits and warrants for arrests, searches, seizures, nontestimonial identification items, and court orders for the production of records;

(b) Examine and evaluate each affidavit for a no-knock search warrant sought pursuant to part 3 of article 3 of title 16, C.R.S., and render legal advice regarding such affidavit to the peace officer submitting the affidavit before such affidavit is submitted to a judge. A district attorney, including any assistant district attorney, chief deputy district attorney, or deputy district attorney, shall indicate approval of an affidavit by placing the date and his or her signature and attorney registration number on the affidavit as allowed by statute or court rule. A district attorney shall only sign an affidavit for a no-knock search warrant sought pursuant to part 3 of article 3 of title 16, C.R.S., upon satisfaction that the information in such affidavit:

(I) Fulfills the requirements of section 16-3-303, C.R.S.; and

(II) Supports the lawful issuance of a search warrant pursuant to section 16-3-301, C.R.S.

(2) In the absence of the bad faith performance of the duties specified in this section, the district attorneys of the state of Colorado shall be immune from liability for the performance of said duties; except that such immunity shall not apply to charges of perjury in the first degree, perjury in the second degree, or false swearing brought pursuant to section 18-8-502, 18-8-503, or 18-8-504, C.R.S., respectively.

(3) The division of criminal justice within the Colorado department of public safety shall review existing policies relating to the issuance and use of no-knock search warrants pursuant to section 24-33.5-503 (1) (q), C.R.S.

**20-1-107. Disqualification - court to appoint prosecutor - legislative declaration.** (1) The general assembly finds that the office of the district attorney was created by the state constitution and that the state constitution gives to the general assembly the exclusive authority to prescribe the duties of the office of the district attorney. The general assembly finds and declares that this section is necessary to protect the independence of persons duly elected to the

office of district attorney.

(2) A district attorney may only be disqualified in a particular case at the request of the district attorney or upon a showing that the district attorney has a personal or financial interest or finds special circumstances that would render it unlikely that the defendant would receive a fair trial. A motion to disqualify a district attorney shall be served upon the district attorney at least two weeks before the motion is heard. Such motion shall contain at least a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the movant and shall be supported by affidavits of witnesses who are competent to testify to the facts set forth in the affidavit. The district attorney may file a response in opposition to the motion and may appear at any hearing held on the motion. The judge shall review the pleadings and determine whether an evidentiary hearing is necessary. The motion shall not be granted unless requested by the district attorney or unless the court finds that the district attorney has a personal or financial interest or special circumstances exist that would render it unlikely that the defendant would receive a fair trial. The order disqualifying the district attorney shall be stayed pending any appeal authorized by this section. If the motion is brought at or before the preliminary hearing, it may not be renewed at the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(3) An interlocutory appeal from an order of disqualification of a district attorney entered in the district court shall be filed in the supreme court pursuant to section 16-12-102 (2), C.R.S. An appeal from an order of disqualification filed in the county court shall be filed in the district court. In computing the time period within which a trial must be commenced, the period during which an appeal pursuant to this section is pending shall be excluded.

(4) If the district attorney is disqualified in any case which it is his or her duty to prosecute or defend, the court having criminal jurisdiction may appoint a special prosecutor to prosecute or defend the cause. The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308.

**20-1-108. When sick or absent, court to appoint.** If he is sick or absent, such court shall appoint some person to discharge the duties of the office until the proper officer resumes the discharge of his duties.

**20-1-109. Powers of appointee.** The person thus appointed shall possess the same power as the proper officer would if he were present.

**20-1-110. Intergovernmental cooperation and contracts.** Every district attorney has the power to authorize and approve the participation of his judicial district in intergovernmental

cooperative relationships concerning criminal prosecution and may enter into contracts on behalf of his judicial district for cooperation with other district attorneys concerning such prosecution and prosecution-related services; except that no district attorney shall be authorized or empowered by this section to obligate county funds which have not been appropriated by the affected boards of county commissioners in his judicial district.

**20-1-111. District attorneys may cooperate or contract - contents.** (1) District attorneys may cooperate or contract with one another to provide any function or service lawfully authorized to each of the cooperating or contracting district attorneys, including the sharing of costs and the administration and distribution of moneys received for mandated costs.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting district attorneys.

(3) Any such contract may provide for the joint exercise of the function or service, including the establishment of a separate legal entity to do so. The district attorneys may allocate up to five percent of the moneys received for mandated costs authorized by the general assembly for administrative expenses.

(4) (a) The statewide organization representing district attorneys or any other organization established pursuant to this article may receive, manage, and expend state funds in the manner prescribed by the general assembly on behalf of the district attorneys who are members of the organization.

(b) The general assembly shall annually appropriate three hundred fifty thousand dollars to the department of law for allocation to the Colorado district attorneys' council, the statewide organization representing district attorneys, or its successor, for the public purpose of providing prosecution training, seminars, continuing education programs, and other prosecution-related services on behalf of the district attorneys who are members of the organization, including, but not limited to, costs and expenses for personnel, administration, materials, and travel.

**20-1-112. Financial audits.** Each office of district attorney in each of the several judicial districts in the state of Colorado shall submit audited annual financial statements prepared in conformance with generally accepted accounting principles to the state auditor. The expenses of such audits shall be paid by each office of district attorney and shall be considered a necessary expense of maintaining his office for the transaction of his official business.

**20-1-113. Reporting of criminal proceedings involving public school students.** (1) On or before August 1, 2013, and continuing through August 1, 2014, the district attorney of each judicial district, or his or her designee, shall report to the division of criminal justice created in section 24-33.5-502, C.R.S., information about offenses alleged to have been committed by a student that have occurred on school grounds, in a school vehicle, or at a school activity or sanctioned event within the judicial district during the preceding twelve months. Failure to submit a timely report to the division of criminal justice pursuant to this subsection (1) does not relieve a district attorney of

his or her responsibility to file the report required by this subsection (1). A district attorney who has failed to file a timely report shall file all such reports with the division of criminal justice no later than August 15, 2015.

(2) The information reported by each district attorney pursuant to subsection (1) of this section shall include the number of offenses filed in court, including the total number of each type of such offenses, the disposition of each case, and the age, gender, school, and race or ethnicity of each student that the district attorney prosecuted.

(3) The information reported by each district attorney pursuant to subsection (1) of this section shall include, to the extent practicable and to the extent that such information is collected by the district attorney as of May 19, 2012:

(a) The number of offenses that were referred to the district attorney by a law enforcement agency and were not filed in court, including the total number of each type of such offenses; and

(b) The number of offenses for which the district attorney referred an offender to a juvenile diversion program or other alternative program, including the total number of each type of such offenses.

(4) Notwithstanding the provisions of section 19-1-303 (5), C.R.S., commencing August 1, 2015, and continuing every August 1 every year thereafter, each district attorney shall report to the division of criminal justice the name of any student who was granted pre-file juvenile or adult diversion for a ticket, summons, or offense that occurred at a public elementary school, middle or junior high school, or high school; in a school vehicle; or at a school activity or sanctioned event. In addition to the full name of the student, the district attorney shall report the student's date of birth, race, ethnicity, and gender and the arrest or incident report number, as recorded by a law enforcement agency. Information, including expunged record information, released by a district attorney to the division of criminal justice pursuant to this section must only be used for research purposes related to school discipline.

(5) Notwithstanding the provisions of section 19-1-303 (4.7), C.R.S., a district attorney or his or her designee is not subject to any criminal or civil penalty for compliance with the reporting obligations of this section.

**20-1-114. Peace officer-involved shooting investigations - disclosure.** (1) The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

(2) If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's investigation. If no true bill is returned, the grand jury may issue a report pursuant to section 16-5-205.5, C.R.S.

(3) All disclosures required by this section remain subject to the criminal justice records act.

## PART 2

## DEPUTIES, ASSISTANTS, AND EMPLOYEES

**20-1-201. Deputies - chief deputies - staff.** (1) (a) The district attorney in every judicial district is authorized to appoint such deputy district attorneys as he deems necessary to properly discharge the duties of his office, with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and such deputies shall hold their offices during the pleasure of such district attorney. Such deputies shall not engage in the private practice of law nor receive any income from any private law firm.

(b) The district attorney in every judicial district is authorized to appoint one or more part-time deputies to fulfill the duties of the district attorney. The part-time deputies shall be entitled to receive as compensation for services rendered a sum as provided in section 20-1-203. The part-time deputy may engage in the private practice of law; except that he or she may not engage in the practice of criminal defense in the same judicial district as the district attorney's office where he or she is employed.

(c) The district attorney in every judicial district is authorized to appoint such special deputy district attorneys as he deems necessary to properly discharge the duties of his office, and such special deputies shall hold their offices during the pleasure of such district attorney. Such special deputies shall receive no compensation for their services from the county or counties of the judicial district; except that such special deputies may be reimbursed their ordinary and necessary expenses, including travel. Such special deputies shall only be appointed from among those persons holding office as attorney general, deputy attorney general, assistant attorney general, or special assistant attorney general of the state of Colorado, or as district attorney, assistant district attorney, chief deputy district attorney, or deputy district attorney of another judicial district, or as United States attorney or assistant United States attorney for the district of Colorado, or as city attorney or assistant city attorney of a city and county in this state, or an attorney employed by the Colorado district attorneys' council and actively licensed to practice law in the state of Colorado.

(d) To prosecute felony nonsupport actions pursuant to article 6 of title 14, C.R.S., the district attorney in every judicial district is authorized to appoint any attorney performing child support enforcement services for the county department of social services pursuant to article 13 of title 26, C.R.S., as a special deputy district attorney, whether such attorney is employed by the department directly, as a contractual agent for the department, or through the services of a private company under contract with the department. In no event shall a special deputy district attorney appointed pursuant to this subsection (1) be granted all of the powers enumerated in section 16-2.5-101, C.R.S. The powers granted by this appointment shall be limited to the prosecutions delineated in this subsection (1).

(2) The district attorney in every judicial district may designate and appoint chief deputy district attorneys, who shall be attorneys-at-law admitted to practice within this state. All chief deputy district attorneys shall hold office at the pleasure of the district attorney; except that no district attorney may appoint more than one chief deputy district attorney without the prior approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of the city and county affected. Such chief deputies shall not engage in the private

practice of law nor receive any income from any private law firm.

(3) Before such deputy district attorneys, chief deputy district attorneys, or special deputy district attorneys enter upon the duties of their office, they shall file with the secretary of state the oath of office required by law to be filed by district attorneys and may be required, as the district attorney shall direct, to file a like bond as that required to be filed by district attorneys.

(4) The district attorney shall provide that any member of his staff be assigned regular duties or duty hours in accordance with the schedule of compensation paid such staff member.

**20-1-202. Powers of deputies.** The deputy has all the powers of the district attorney.

**20-1-203. Compensation of deputy, chief deputy, and assistant district attorneys.** Compensation for all deputy, chief deputy, part-time deputy, assistant, and part-time assistant district attorneys shall be fixed by the district attorney with the approval of the board of county commissioners or boards of county commissioners of multicounty districts or the city council of a city and county affected, and each county comprising such judicial district shall pay such deputies, chief deputies, assistants, and part-time assistants salaries in the proportion which the population of such county bears to the whole population of such judicial district.

**20-1-204. Powers of chief deputy.** The chief deputy district attorney has all the powers of the district attorney.

**20-1-205. Assistant district attorneys.** (1) (a) In every judicial district, the district attorney is authorized to appoint an assistant district attorney who shall be an attorney-at-law admitted to practice within this state and who shall actually have practiced law not less than two years.

(b) Repealed.

(c) The district attorney in every judicial district having a population not exceeding fifty thousand may appoint one part-time assistant district attorney. Such part-time assistant may engage in the private practice of law.

(2) Every such assistant district attorney, before entering upon the duties of office, shall file with the secretary of state the oath of office required by law to be filed by district attorneys and shall hold office at the pleasure of the district attorney by whom he is appointed. Such assistant district attorney, before entering upon the duties of office, may be required, as the district attorney may direct, to file like bond as that required to be filed by district attorneys.

(3) The salaries authorized by subsection (1) of this section shall be paid monthly and shall be paid by the counties comprising such judicial district out of the ordinary revenues of such counties. Every county shall pay in proportion as the population of such county bears to the whole population of such judicial district, according to the latest federal census.

**20-1-206. Powers.** All matters and things required or which may be done by the district attorney may be done with like force and effect by his assistant under the direction and control of the district attorney, and he has all the powers of the district attorney by whom he was appointed; except that such acts shall all be done in the name of the district attorney.

**20-1-207. Powers of assistant.** The assistant district attorney has all the powers of the district attorney.

**20-1-208. Special officers - stenographers - salaries.** (1) The district attorney of each judicial district in this state having more than one hundred thousand population, as shown by the last decennial census, except the city and county of Denver, is authorized by and with the consent of the district judges of the judicial district to appoint one or two special officers, each at an annual salary to be determined by such district judges of not to exceed five thousand dollars, and actual and necessary expenses; and in his district he is authorized by and with the consent of the district judges of the judicial district to appoint a stenographer at an annual salary to be determined by such district judges of not to exceed three thousand dollars. Said salaries shall be paid monthly and shall be borne and paid monthly by the several counties comprising said judicial districts. Each county shall pay its proportionate part of said salaries as the population of such county bears to the whole population of the judicial district, according to the last preceding decennial census.

(2) The district attorney of each judicial district in the state having a population of less than one hundred thousand as shown by the last decennial census is authorized to appoint a special investigator, a stenographer, and such other technical and professional assistants as are necessary to assist him in properly transacting all of the business of his office. The salary and compensation for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees. The salaries of such persons so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of such county bears to the whole population of such judicial district, according to the last preceding decennial census. Such budget shall be approved by the boards of county commissioners.

**20-1-209. Investigators and other employees.** (1) The district attorney of each judicial district is authorized to appoint a chief investigator and such other investigators as he may deem necessary in the conduct of his office and such stenographers, office employees, and other technical and professional assistants as are necessary to properly transact the business of his office. The salary and compensation in each instance for such employees and assistants shall be fixed by such district attorney in an amount commensurate with the services performed and the duties and responsibilities of such employees, subject to the approval of the board of county commissioners of the county or the city council of a city and county affected.

(2) The salaries of any personnel so appointed shall be paid by the various counties within the judicial district, each county paying its proportionate part of said salaries as the population of

such county bears to the whole population of such judicial district, according to the last preceding federal census.

**20-1-210. Prohibition of practice of law - associates - members of district attorney's staff.** No attorney-at-law practicing law in the state of Colorado who is a member of a private law firm with which a district attorney, assistant district attorney, or deputy district attorney is associated may defend any person or persons who are being prosecuted by a salaried staff member of the office of said district attorney; nor may any such salaried staff member defend any person or persons who are being prosecuted in any judicial district in the state of Colorado.

### PART 3

### COMPENSATION AND EXPENSES

**20-1-301. Compensation of district attorneys.** (1) (a) (I) Commencing January 1, 1997, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than sixty-seven thousand dollars per annum.

(II) Effective January 1, 2009, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thousand dollars per annum.

(III) Effective January 1, 2010, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred ten thousand dollars per annum.

(IV) Effective January 1, 2011, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred twenty thousand dollars per annum.

(V) Effective January 1, 2012, and for each year thereafter, in every judicial district the district attorney shall receive as compensation for his or her services the sum of not less than one hundred thirty thousand dollars per annum.

(b) Any amount in excess of the compensation amount set pursuant to paragraph (a) of this subsection (1) shall be set by the board or boards of county commissioners of the county or counties comprising the judicial district or the city council of the city and county of Denver for the second judicial district.

(c) During the regular legislative session commencing January, 2012, and every fourth legislative session thereafter, the judiciary committees of the house of representatives and the senate, or any successor committees, shall review the compensation of elected district attorneys and make recommendations, if appropriate, to the general assembly regarding the compensation of elected district attorneys.

(2) A district attorney shall not engage in the private practice of law, nor shall he receive any income from any private law firm.

**20-1-302. Expenses.** Except as otherwise specifically provided, the district attorneys of each judicial district in the state of Colorado shall be entitled to collect and receive at the end of each month, of and from the respective counties in the district attorney's judicial district, the necessary expenses of maintaining an office for the transaction of official business, which expenses shall be borne by the various counties in the judicial district, each in the proportion that the population of such county bears to the population of the whole judicial district, according to the last preceding population estimate that is prepared before May 1 of the current year by the division of planning in the department of local affairs pursuant to section 24-32-204, C.R.S. With the agreement of all of the boards of county commissioners of the judicial district, the funding allocation provisions of this section may be modified. Nothing in part 2 of this article or this part 3 shall prohibit any municipality, county, or government entity from agreeing to fund programs, projects, personnel, or salaries that are in addition to the funds provided for the reasonable and necessary expenses of the district attorney with the agreement of the relevant board of county commissioners.

**20-1-303. District attorneys allowed necessary expenses.** Except as otherwise specifically provided, the district attorney of each judicial district in the state of Colorado, and each of his assistants and deputies, shall be allowed to collect and receive from each of the counties in his district the expenses necessarily incurred in the discharge of his official duties for the benefit of such county.

**20-1-304. District attorney and employees authorized to receive benefits. (Repealed)**

**20-1-305. Benefits not considered compensation or increase in emoluments. (Repealed)**

**20-1-306. Salaries paid from state and county funds.** The salaries of district attorneys of the several judicial districts of the state as set forth in section 20-1-301 (1) (a) shall be paid in twelve equal monthly installments of which the state shall contribute eighty percent annually and the counties making up each district the balance, each county's payment to be in the same proportion as provided in section 20-1-302.

**20-1-307. Social security coverage.** The office of district attorney, including the district attorney and the employees of each office within each judicial district, is a juristic entity as described in section 24-53-101, C.R.S. Each office of district attorney shall enter into an agreement with the director of the division of unemployment insurance in the department of labor and employment for the purpose of including the district attorney and the employees of the district attorney's office under the state's federal-state social security coverage agreement with the secretary of the United States department of health and human services pursuant to section 24-53-104, C.R.S.

**20-1-308. Compensation and expenses - special prosecutors.** (1) The compensation and expenses of special prosecutors appointed pursuant to section 13-1-128 or 16-5-209, C.R.S., or section 20-1-107 shall be paid as follows:

(a) When the special prosecutor is a full-time district attorney, assistant district attorney, or deputy district attorney, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor, as the judge of the court, which has jurisdiction of the offense being prosecuted, may direct.

(b) In all other cases, the county or counties in the judicial district for which the appointment is made shall pay only the ordinary and necessary expenses, including travel, of the special prosecutor as directed by the judge in addition to a fee for the services of the special prosecutor, which fee shall be approved by the judge but which may not exceed the amount of salary payable to a retired judge sitting in that court or district pursuant to section 5 (3) of article VI of the state constitution.